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ABSTRACT

The goals of this study of the relationship between judges and elderly offenders were: (1) to describe beliefs and attitudes held by judges about the elderly and elderly delinquents, (2) to catalogue sanctions judges use and recommend as ideal for elderly shoplifters and other elderly misdemeanants, and (3) to poll judges about their willingness to accord special treatment to the elderly. Of the 112 judges sitting on Florida's County Court Bench, 97 answered a five-part questionnaire which asked about judicial beliefs, general attitudes toward the elderly, attitudes about the reasons for shoplifting, willingness to accept an intervention program for elderly offenders, and demographic information. Findings indicated that the majority of judges believe the elderly are not shown enough respect but that society does not have an obligation to help them if they need help. They recognized that the elderly suffer more during economic hard times than others but they vary in attitudes about differential treatment for elderly shoplifters. In actual sentencing judges used different sanctions but saw pretrial intervention or counseling as ideal methods. They cited psychological problems and financial need as the major causes of elderly shoplifting. Demographic characteristics of the judges did not appear to be related to willingness to use pretrial intervention. (IS)

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The Judiciary Confronts the Elderly Defendant: A Study of Judicial Beliefs, Attitudes and Responses Concerning Crimes Committed By Persons Sixty Years of Age and Older

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I. OVERVIEW

There isn't very much that criminologists agree upon, but an unimpeachable tenet of empirically based criminology, one which transcends functionalist, conflict, and symbolic interactionist perspectives, is that with increasing age crime decreases. Quite understandably, scholarly efforts aimed at explaining, predicting, and controlling crime have therefore mainly focused upon younger age groups. Regrettably, such a truncated examination of the population pyramid in its correlation with crime has resulted in our closing off two major avenues of worthwhile research: 1) we have ignored the fact that elderly people do commit crimes, possibly for reasons different from those used to explain juvenile or young adult crime, and certain to raise special dilemmas regarding the goals and procedures of the criminal justice system; 2) we have failed to explore the elderly as a paradigm of internal and external containments that work to prevent crime. Recently, however, criminologists have "discovered" one of these avenues, and there is now a headlong assault being made upon our ignorance about elderly criminal law violators. We have come to describe these developments in an article appropriately titled, "White-Haired Offenders: An Emergent Social Problem" (Feinberg, 1984). Much of this seminal research has focused upon the extent of elderly criminality, and variance by age,

sex, and geographic area, typically using Uniform Crime Report data (Feinberg, 1984; Shichor, 1984). In 1981, for example, 213,000 persons ages sixty and over were arrested. Of these, only 16.9 percent (36,000) involved arrests for "serious" crimes, i.e., Part 1 Offenses (murder, forcible rape, robbery, aggravated assault, burglary, larceny, arson, and motor vehicle theft). The remaining 83.1 percent (177,000) involved mainly arrests for drunkenness (50,000), driving while intoxicated (49,000), and disorderly conduct (15,000). Although they represent only two percent of the total arrest population for that year, the absolute number of elderly arrests are indicative of a serious trend and, as such, are shocking enough to attract the attention of both criminologists and gerontologists alike (e.g., Wilbanks and Murphy, 1984; Feinberg, 1984; Meyers, 1984). There is a dearth of materials, however, on the plight of elderly offender in the arms of the criminal justice system. Notable exceptions here are Fyfe's study of the dilemmas inherent in police-elderly relations, including the need for sensitizing the police to the concerns of the elderly,(Fyfe, 1984), Bachand's indepth judicial investigation which repudiates the myth that preferential treatment is accorded to the elderly by the courts (Bachand, 1983), and a slightly more robust literature on the special problems of the incarcerated elderly offender and related remedial problems (e.g., Goetting, 1984; Rubinstein, 1984; Golden, 1984).

The study we have undertaken seeks to elaborate upon our

knowledge of judicial encounters with elderly criminal law violators. Our primary concern is the trial level judiciary and its reaction to one of the more mundane criminal matters that typically bring the elderly before the courts, namely petit theft (i.e., shoplifting). Secondarily, we examine how such judges respond to elderly misdemeanants in general. However, prior to specifying our objectives and defining the dependent and independent variables with which we work it's necessary to acknowledge our indebtedness conceptually and methodologically to a long history of research into judicial behavior. Of especial relevance are studies by Schmidhauser (1961), Nagel (1977), Goldman (1965), Lemon (1974), Austin and Williams (1977), and Fontaine and Emily (1978). Common to each of these studies, various socio-demographic and experiential background characteristics of judges are systematically related to decision patterns. Schmidhauser, for example, found that greater experience on the judiciary does not precipitate in greater judicial constraint or conservativism as the *à priori* assertion contended. Using a similar orientation, but expanding the number of personal traits of the judiciary studied, Nagel found that those having lower incomes, pre-judicial careers as prosecutors rather than businessman, catholic as opposed to protestant religious backgrounds, and political party affiliations as democrats rather than as republicans were more likely to favor the defense over the state in criminal matters. However, with the exception of political party affiliation,

none of these differences were statistically significant. Goldman's research into the relevance of such background factors as judges' age, professional experience, socio-economic status, and political party allegiance led him to be less than sanguine about the possibility of ever predicting judicial decisions based upon such factors, and he ultimately rejects the thesis that they are of major significance in directly generating judicial behavior. However, even he stands short of rejecting their relevance altogether in judicial decision-making. Meanwhile, in England we observe a study by Lemon which found that magistrates' attitudes towards justice, beliefs that punishment corrects, and their general level of intolerance, do not appear to directly influence their sentencing behavior. On the other hand, participation in certain training programs ancillary to assuming the bench results in judges being more punitive in their sanction decisions. Lastly, we take direction from two creative studies, one by Fontaine and Emily, which successfully related judicial statements attributing certain causes to the defendant's criminal act and their sentencing decision, and the second, by Austin and Williams, which located evidence suggesting that variance in the sanctions judges use reflect differences in their beliefs regarding the purpose of legal sanctions. It is in the tradition of such studies that our own research objectives are conceptualized.

11. STATEMENT OF PURPOSE

The general goal of this study is to explore judicial conceptions and reactions concerning an emerging new category of criminal law violators, namely, the elderly delinquent. As such it has two components, one descriptive and the other analytic. The descriptive component seeks three objectives: 1) to profile popular beliefs and attitudes judges hold about the elderly and elderly delinquents in our society; 2) to catalogue sanctions judges use and recommend as ideal for elderly shoplifters and other elderly misdemeanants; and 3) to poll judges about their willingness to accord special treatment to the elderly in the criminal justice system. The analytic component seeks to disclose if certain selected personal traits of judges, or the beliefs and attitudes they hold regarding the elderly in general and elderly delinquents in particular, influence: 1) the sanctions they use in such cases; 2) the sanctions they recommend; 3 variance in the sanctions used and recommended; 4) their willingness to accord special treatment to the elderly caught up in the criminal justice system; and 5) their preferences to use pretrial intervention for elderly delinquents, and related rationales.

111. METHODOLOGY

This study was undertaken in 1980 under the aegis of the Public Law Institute, Center for the Study of Law at Nova University, in Fort Lauderdale, Florida. The State of

Florida was selected as situs for the study for several reasons: 1) approximately twenty-three percent of its eleven million residents were sixty years of age and older; 2) according to the 1980 Uniform Crime Reports, over 12,000 Floridians sixty years of age and older had been arrested; 3) in certain Florida counties elderly arrest figures translate into literally thousands of elderly persons appearing before the courts on criminal charges. Court records for Dade County (Miami), for example, reveal that 2283 persons sixty years of age and older came before the criminal courts. Twenty-five percent (546) were charged with felonies, the remainder with various misdemeanors, including especially petit larceny, i.e., shoplifting. Indeed, 420 elderly defendants, representing 19 percent of their total criminal court population, were so charged.

All 112 judges sitting on Florida's County Court Bench in 1980 were invited to participate in this survey. Assisted by follow-up letters and telephone reminders 97 judges accepted, constituting an 80 percent response rate. They represent each of Florida's sixty-seven counties, including rural, suburban, and urban subdivisions. Judges range in age from twenty-nine to seventy years, describing a sample mean age of 46.4 years and a median of 43.5 years. The minimum length of judicial experience is just under one year and the maximum is thirty-four years. Moreover, there is nothing to suggest that our nonrespondents are in any significant way different in these relevant characteristics so as to bias our sample.

Data are secured using a five part mailed questionnaire. Part I solicits information regarding judicial beliefs and attitudes about the elderly in general. Emotive statements are provided and respondents answered in terms of a five-point agree-disagree Likert scale. Part II provides a delineation of potential causes of elderly shoplifting (e.g., economic need, psychological problems, social maladjustment, et cetera), and respondents are asked to rank order these from most to least important. Also provided in this section is a list of possible major functions of the criminal justice system (e.g., general deterrence, specific deterrence, rehabilitation, et cetera). These, too, respondents are asked to rank order in terms of their relative importance. Part III inquires about judges' willingness to accept the introduction of an intervention program for either a) misdemeanant elderly shoplifters or b) elderly misdemeanants in general. Essentially a yes/no format is used. Part IV queries respondents about the types of sanctions they use for first-time misdemeanant elderly shoplifters and for other elderly misdemeanants using an open-ended format. Subsequent questions tap judicial conceptions about the ideal sanctions for such offenders. Part V concludes the questionnaire by securing some basic socio-demographic background data about the respondent (e.g., age, length of judicial experience, and pre-judicial career).

Ancillary to presenting our findings a few additional explanatory remarks are necessary. The descriptive dimension

of our study is rather simple and straight forward. Judicial responses to statements regarding the economic plight of the elderly, their need for respect, perceived causes of elderly shoplifting, sanctions used and idealized sanctions, and similar beliefs, attitudes, and responses are tallied and summarized using absolute and percentage comparisons. The analytic division is somewhat more complex. First, judges are divided into two major age categories: "Younger Judges," i.e., those ages forty or less (N=37) and "Older Judges," i.e., those forty and over (N=55). Second, we distinguished two categories of judicial experience: "Less Experienced Judges," i.e., those with five or fewer years service (N=45) and "More Experienced Judges," i.e., those with over five years experience (N=49). The mean number of years service on the bench for less experienced judges is 2.64 years (Md =2.50), and for more experienced judges it is 10.68 years (Md =9.80). Third, we established three separate groups of judges based upon their pre-judicial careers as follows: "Lawyers," i.e., those who were either in private practice or on retainer with corporations; 2) "Public Servants," i.e., those who were either prosecutors or public defenders; 3) "Businessmen," i.e., those who were managers, administrators, proprietors, et cetera. Lastly, judges are categorized as "Sympathetic," "Unsympathetic," or "Neutral" in their general attitude towards the elderly. These determinations are made according to aggregated responses to three attitudinal statements (supra).

At different points in our analyses each of the aforedescribed categories is taken as an independent variable. Correlations are then drawn with observed patterns in judicial beliefs concerning the elderly and their responses to misdemeanant elderly behavior which, in turn, are reintroduced as dependent variables. Chi-square tests are implemented to establish the existence of any statistically significant correlations between our independent and dependent variables. The .05 level of significance is used throughout this study. In keeping with its exploratory nature, more sophisticated statistical tests are contra-indicated.

IV DATA LIMITATIONS AND ASSETS

Just as we are counselled by the research of others in setting forth our objectives and methodology, so too have we inherited a number of their limitations. First, we imply an oversimplified model of judicial decision-making with respect to selecting sanctions. For example, we control for variance in judicial attitude towards the elderly *qua* elderly as possibly influencing the types of sanctions they use when confronted by convicted elderly misdemeanants. While this is not unreasonable, quite possibly variations in the sanction decision also involve differences in judicial attitudes toward the particular offense, the sanctions available, and even the presence of attorneys in cases involving minor violations. None of these, however, is controlled.

Concomitantly, we ignore the important process by which such background characteristics are converted into sanction relevant considerations. How, for instance, does the fact of a judge's age become operationalized into a determinant of a sanction? Does it reflect a maturation stage in the aging process? Does it index having lived through certain historical periods? Does it have anything to do with variances in judges' conceptualizations of the judicial role, as several researchers have suggested (Ungs and Baas, 1972; Sheldon, 1973)? Another variant of our oversimplified model is that we have not articulated the possible influence of certain institutional factors upon sanction decisions. Over-extended probation officer caseloads, for example, may render judges reluctant to use probation as a sanction. Similarly, evidence suggests that certain sanctions are normative for some cases within given jurisdictions and judges are gradually socialized into using these "normal sanctions" (Grossman, 1967; Sheldon, 1973). Most importantly, we may be guilty of over-rationalizing the entire sanctioning process, something Jerome Frank cautioned against in his now classic work, Courts On Trial, (Frank, 1949).

A second major area of limitations concerns the fact that many of our classifications are not truly discrete. For example, we include as "sympathetic" judges who respond affirmatively to a majority of certain statements characterizing the elderly in a sympathetic manner. It

necessarily follows that even if certain individual statements are responded to in a neutral or even unsympathetic manner the overall rating of any given judge may still result in his/her being classified as sympathetic. Similarly, we note that only the most gross distinctions are made to control for judges' age or length of experience (infra).

While these are serious dilemmas, a number of considerations nevertheless justify our efforts: 1) they initiate an inquiry into a significant relationship which until now has remained virtually invisible, i.e., the elderly defendant-criminal court judge dyad; 2) they portend to inform us about judges' beliefs regarding the cause of misdemeanant shoplifting by the elderly, and about any impact causal attribution has upon sentencing behavior; 3) they explore the possible influence sympathetic attitudes towards a minority have upon the sanctions prescribed for their law violations. Other researchers have examined attitudes of sympathy for their impact upon sanction decisions, but typically only as an index of political orientation, (i.e., liberalism verses conservatism), and not as an expressive activity in and of itself (Nagel, 1962); 4) they constitute a specification and replication of numerous surveys on the important subject of judicial background characteristics and other extra-legal variables as these may impact upon judicial decision-making, albeit here we focus upon the more mundane but typical types of legal violations which the lower level

courts must address daily; 5) they enjoy the methodological advantages of a superior response rate (80 percent), a statistically viable base (N=97), and a relatively representative sample which includes essentially comparable proportions of younger and older judges, those with greater and lesser experience, and those who serve in urban, suburban, and rural communities.

V. FINDINGS

Statement #1. "People do not show enough respect towards the elderly in our society."

The majority of judges believe that the elderly are not shown enough respect in our society. Surprisingly, however, it is not the overwhelming majority that had been anticipated. Indeed, while 57 percent agree with this statement, the remaining 43 percent are about equally divided between disagreeing (22 percent) and being neutral (21 percent). In addition, we find no support for the position that older judges are more sensitive than their younger colleagues to the elderly's need for more respect ($x^2 = 2.96$). Similarly, we observe that more extended service on the judiciary does not appear to increase judicial cynacism towards the elderly, at least not in the area of having concern for the elderly's need for greater respect ($X^2 = 3.84$). Lastly, judges having backgrounds as lawyers, public servants, or businessmen are similar in their likelihood of accepting, rejecting, or standing neutral on the statement

that people do not show enough respect towards the elderly in our society ($X^2 = 9.07$).

Statement #2. "The elderly have paid their dues and should be looked after by society if they need help."

Surprisingly, most judges do not concur with the policy position that the elderly have paid their dues and should be looked after by society if they need help. Forty-six percent agree, while a total of 54 percent either disagree (22 percent), or are neutral (32 percent). Nor do we observe any significant association between judges' age, length of judicial experience, or pre-judicial careers and their stand on this matter. The respective chi-squares emerging when correlating younger and older judges, more and less experienced judges, and judges having pre-judicial careers identified as lawyers, public servants, or businessmen and judicial beliefs regarding society's general welfare obligations towards the elderly in need of assistance are $X^2 = 3.49$, $X^2 = 0.06$, and $X^2 = 4.58$. None of these is significant at the .05 level. Of especial interest, however, is our finding that older judges do not appear to support a more protective welfare position for the elderly as a matter of social policy than is true of younger colleagues.

Statement #3. "The elderly suffer more during hard economic times than the general population."

Over two-thirds of the younger judges sampled agreed that

hard economic times effect the elderly more than the general population. Indeed, this belief about the difficult economic status of the elderly is one of the most generally shared of all judges' beliefs concerning the elderly. The remaining one-third of the judges are about equally distributed between those who reject it (14 percent) and those who are neutral on it (16 percent).

Neither judges age, nor length of judicial service, nor pre-judicial career proved to be significantly correlated with whether or not one accepted, rejected, or stood neutral on the belief that hard economic times effect the elderly more than the general population. Chi-squares emerging from correlating younger and older judges, more and less experienced judges, and judges who were lawyers, public servants, or businessmen prior to assuming the bench and judicial position regarding the difficult economic status of the elderly are $X^2 = 1.43$, $X^2 = 0.31$, and $X^2 = 1.83$, respectively. None of these statistics is significant at the .05 level. Again, we are impressed by the fact that older judges are not especially sensitive to the relative economic difficulties of other elderly persons.

Statement #4. "The elderly involved in misdemeanors should be accorded special consideration by the criminal justice system."

Only 38 percent of the judges responding agree that the elderly should be shown special consideration by the criminal

justice system. Twenty-five percent reject this idea outright, and 37 percent are neutral. Alternatively stated, there does not appear to be one crystallized position regarding the statement that the elderly ought to receive special treatment by the criminal justice system.

Nor do we find that older judges are significantly more likely than younger colleagues to agree that such special consideration be accorded the elderly misdemeanant. Correlating judges ages fifty and over, forty to forty-nine, and under forty with whether they accept or reject the idea of according special consideration to elderly misdemeanants caught up in the criminal justice system results in a $X^2 = 6.41$. This is not significant at the .05 level. Similarly, length of judicial experience is found to be unrelated to whether or not judges believe elderly misdemeanant should receive special consideration by the criminal justice system. Judges with five or more years experience were equally likely as those with less than five years experience to agree that elderly misdemeanants should receive special consideration in the arms of the criminal justice system ($X^2 = 0.10$).

Judges General Attitude Towards The Elderly

Three attitudinal categories of judges are distinguished based upon the aggregate of their responses to three of our belief statements: 1) "People do not show enough respect towards the elderly"; 2) "Hard economic times effect the elderly more than the general population"; 3) "The elderly

have paid their dues and should be looked after by society if they need help." Those judges who agreed or agreed strongly with at least two of these statements are labelled "Sympathetic." Conversely, those judges who either disagreed or disagreed strongly with at least two of these statements are labelled "Unsympathetic." Lastly, those judges who either respond neutrally to at least two of these statements, or who agreed-agreed strongly with one, disagreed-disagreed strongly with another, and who are neutral on a third are labelled "Neutral."

Fifty-nine percent (54/92) of the judges were found to be sympathetic towards the elderly in our society. The remainder were approximately equally distributed between the unsympathetic and neutral categories, 22 percent (20/92) and 20 percent (18/92) respectively. In essence, judges were almost equally likely to be sympathetic towards the elderly as to hold some alternative position. That so many judges appeared to be less than sympathetic towards the elderly was itself an unexpected finding of this study.

Judicial age proved not to be significantly correlated at the .05 level with judicial attitude toward the elderly, X^2 =2.33. Quite surprisingly, older judges were not significantly more likely than their younger colleagues to be sympathetic towards the elderly, nor were younger judges more likely than older ones to be unsympathetic (Table #1).

Next we sought to determine if length of judicial experience somehow impacts upon judicial attitude toward the

elderly. For this purpose we selected only judges with two years or less experience on the bench and those with six or more years experience. The null hypothesis that there is no relationship between length of judicial experience and judges' attitudinal position regarding the elderly is tested using a chi-square. The results are not significant at the .05 level, X^2=1.41. Thus, we could not reject the null hypothesis. The data do not support the belief that length of judicial experience is related to judges' attitude toward the elderly. More and less experienced judges are about equally likely to contribute to the ranks of sympathetic, unsympathetic, and neutral judges (Table #2). Anticipating that judicial age may be obfuscating any relationship between length of judicial experience and judicial attitude toward the elderly, we sought to at least partially control its influence by dividing the judges into two gross age categories, i.e., those fifty and older and those forty and younger. Regrettably, the numbers in each cell are too small to permit any stable or reliable statistical testing. However, some interesting casual observations of proportions are possible. We note, for example, that those ages fifty and over with two years or less experience were slightly less likely to be sympathetic towards the elderly than their age cohort with six or more years experience. On the other hand, judges forty and younger who have less judicial experience are slightly more likely than their age peers having more experience to be sympathetic towards the elderly. Indeed,

older judges with less experience manifest almost the same attitude patterns toward the elderly as younger judges with more experience. It's as if age may be substituted for experience, and vice-versa, in effecting their attitudinal profile towards the elderly. Concomitantly, younger judges with less experience roughly parallel in their attitudinal distribution older judges with more experience.

Finally, we tested the hypothesis that judges who are generally sympathetic towards the elderly are more likely than unsympathetic or neutral judges to approve special considerations being accorded to elderly misdemeanants by the criminal justice system. A 2 X 3 table was constructed with judges' position regarding a policy which would allow special consideration being accorded to the elderly misdemeanant within the criminal justice system on the X-axis and judges' attitude towards the elderly in general on the Y axis. The resulting $X^2 = 8.06$ is not significant at the .05 level. In essence, just because judges are sympathetic towards the elderly does not mean they are more likely than unsympathetic or neutral colleagues to agree that special consideration ought to be accorded the elderly once they enter the criminal justice system.

In sum, judicial beliefs about our need to show greater respect for the elderly, as well as their beliefs regarding the relative economic difficulties of the elderly, appear to be unrelated to their willingness to provide special consideration to the elderly should they be brought into the

criminal justice system for misdemeanant behavior. However, believing that the elderly should be provided support by society if they need it does indeed prove to be statistically relevant here. The public's responsibility toward the elderly in general translates into helping them even when they are in trouble with the law (Table #3). Lastly, whether or not judges are sympathetic towards the elderly in general proves to be irrelevant with respect to their willingness to accord them special considerations within the criminal justice system. Favoring special consideration for the elderly misdemeanant appears to be more a matter of a general policy orientation towards the elderly. It has little to do with personal feelings of sympathy towards them, special concern for their economic circumstance, or sensitivity to their psycho-social needs for respect.

Sanctions Employed By Judges In Response To Elderly Shoplifters and Other Elderly Misdemeanants: General Patterns

In order of decreasing frequency, the most commonly cited sanctions judges use in cases of misdemeanant shoplifting by the elderly are probation (46 percent), economic sanctions 39 percent), required community service (31 percent), counselling (12 percent), and incarceration (four percent). Sanctioning elderly misdemeanants in general produces a similar profile. Again probation is the most frequently named sanction (32 percent), followed closely by economic

sanctions (28 percent), and required community service (22 percent). Counselling once more scores a distant fourth (12 percent), and incarceration is very rare (six percent) (Table #4).

These data suggest that there is no single clearly dominant sanction for the elderly involved in minor crimes. They also reflect a general rejection of counselling as a sanction alternative for these elderly offenders in preference of probation, economic sanctions, and even required community service.

Judicial Conceptions of Ideal Sanctions For Elderly Shoplifters.

The sanction most commonly recommended as ideal for misdemeanant elderly shoplifters is pretrial intervention. Thirty-three percent (17/50) of our judges so respond. Counselling is also widely recommended as an ideal sanction in these cases, currying favor among 30 percent (15/50) of our judges. At the other end of the spectrum, none of the judges actually recommends incarceration, and only 12 percent (6/50) recommend economic penalties as an ideal sanction for these offenders.

These findings become especially salient when juxtaposed with judges' responses to our inquiry about the sanctions they actually use in such cases. Several major inconsistencies are thereby observed. For example, whereas 33 percent of our judges recommend pretrial intervention as

the ideal sanction for misdemeanant elderly shoplifting, only seven percent of the total sample actually use it. The fate of counselling as a sanction in these cases is similarly at variance. Thirty percent (15/50) recommend it as ideal, but only 12 percent use it. Conversely, although only rarely recommended as an ideal sanction for these elderly misdemeanants, economic sanctions are among the most popularly used. Only 12 percent (6/50) recommend it, but as many as 40 percent (37/92) actually use it. Indeed, only incarceration enjoys sanction consistency in these cases. It is very rarely used, and it is never recommended as ideal (Table #5).

In sum, our data suggest that for the most part judges manifest a definite discontinuity between the sanctions they use for misdemeanant elderly shoplifters and the sanctions they believe to be ideal to impose in such cases. This constitutes one of the more profound findings emerging from these exploratory research efforts.

Controlling for judges' age suggests that younger judges are slightly more likely than older judges to recommend pretrial intervention as an ideal sanction for cases involving misdemeanant elderly shoplifters. Thirty-nine percent of the younger judges as compared to only 21 percent of the older judges recommend it. Conversely, older judges appear more likely than younger judges to recommend probation as an ideal form of sanction for misdemeanant elderly

shoplifters, 32 percent as compared to 10 percent respectively. Otherwise, no major differences are observed between younger and older judges and the type of sanction they recommend as ideal for misdemeanant elderly shoplifting.

Next, we controlled for the possible impact that either length of judicial experience or pre-judicial career might have upon their conceptions of the ideal sanction(s) for misdemeanant elderly shoplifters. The most salient difference observed is that judges having greater experience are more likely than less experienced judges to cite either economic penalties or probation as the most ideal form of sanction. No significant differences are observed among judges having pre-judicial careers as lawyers, public servants, or businessmen in terms of their conceptions of the ideal sanction for misdemeanant elderly shoplifters. Pretrial intervention dominates, followed by counselling. Interestingly, although we anticipated that those having pre-judicial careers as public servants would be especially prone to favor required community service as an ideal sanction for misdemeanant elderly shoplifters, this did not prove to be the case.

Lastly, we sought to determine whether a judge's general attitude toward the elderly impacts upon his/her conception of the ideal sanction for misdemeanant elderly shoplifters? Twenty-three of the judges classified as sympathetic towards the elderly indicate the type of sanction they'd ideally like

to use in such cases. In order of preference they are: 1) pretrial intervention, 43 percent (10/23); 2) counselling, 43 percent (10/23); 3) community service, 35 percent (8/23); 3) probation, 30 percent (7/23); and 4) economic penalties, 17 percent (4/23). By comparison, of the seven unsympathetic judges offering recommendations, none suggest counselling, and community service is equally unpopular. On the other hand, three do recommend pretrial intervention, and one recommends probation. Similarly, 50 percent (5/10) of the neutrals suggesting ideal sanctions for misdemeanant elderly shoplifters recommend counselling and 40 percent (4/10) recommend pretrial intervention. In sum, pretrial intervention appears to be the preferred ideal sanction regardless of whether one is sympathetic, unsympathetic, or neutral towards the elderly. This is especially poignant when it is remembered that pretrial intervention is rarely used by any of the attitudinal groups. It is also especially informative to discover that pretrial intervention is popularly idealized even among those generally unsympathetic towards the elderly. Apparently, favoring a program which entails diverting misdemeanant elderly shoplifters from the criminal justice system transcends judges' general attitudinal disposition towards the elderly, at least as herein defined and operationalized. In addition, while counselling and community service are relatively popular as idealized sanctions for those generally sympathetic towards the elderly, they are not so considered by those neutral or

unsympathetic toward the elderly.

Perceived Cause of Elderly Shoplifting and Sanctions Used

Respondents are asked to rank order from most to least significant a list of causes commonly assumed to underlie misdemeanant elderly shoplifting. These include: 1) economic need; 2) psychological problems; 3) social maladjustment; 4) too light penalties; 5) insufficient respect for the law; 6) physical ailments and 7) other.

Psychological problems is most typically cited as the prime cause of elderly shoplifting. Forty-one percent of the judges so responded. Economic need ranks a close second, garnering 36 percent of the respondents. The remaining alternatives all score quite poorly. Social maladjustment, too light penalties, and a lack of respect for the law are all tied for a distant third position, each currying favor with only about five percent of the judges. Finally, physical ailments are rarely mentioned as the prime cause, with only four percent so responding (Table #6).

In sum, economic needs and psychological problems are the two most commonly perceived prime causes of elderly shoplifting according to the judiciary. Correlatively, judges are equally divided as to which of the two is the prime cause. What they do agree upon is that all of the other alternatives are relatively insignificant as explanations of most elderly shoplifting.

Next, we sought to determine whether or not there was

congruence between the type of sanction used by judges in cases involving misdemeanant elderly shoplifters and the perceived prime cause of this aberrant behavior. For example, if a judge believes that misdemeanant elderly shoplifting is caused by economic need is s/he as likely to levy a fine and/or court costs on the offender as one who believes the prime cause is a lack of respect for the law? Similarly, if a judge believes that elderly shoplifting is due primarily to psychological causes is s/he more likely to use counselling as a sanction than, for instance, required community service?

While it may be true from a strictly legalistic perspective that the psychological, social, or economic factors which cause a particular individual to violate the law are typically irrelevant to the finding of guilt, and equally they are often enjoined from consideration in sanction determination (as in mandatory sentencing), it nevertheless has been shown that they may indeed be influential when judicial discretion in sanction is allowable (Fontaine and Emily, 1974). Since the law violation we are investigating is a first-time misdemeanor, a relatively minor infraction in which opportunities for judicial discretion are maximized, it is reasonable to suggest that we ought to find a compatible relationship between judges' beliefs about the extra-legal factors at work causing the law violative behavior and the nature of the sanction selected for such cases.

Among judges who believe that economic need is the prime cause of elderly shoplifting and among those who believe that it is due to psychological problems, probation is the most commonly used sanction (49 percent and 48 percent respectively). This sanction contains both a counselling and a supervisory dimension. These can be readily articulated towards remediating either psychological or economic difficulties. The choice of probation is therefore indicative of a congruence between the sanction used and perceived cause of the offense. Similarly, counselling is more often used by judges who believe that psychological causes are behind elderly shoplifting than it is by those who ascribe it to economic causes, 20 percent verses 13 percent.

On the other hand, several discordant situations are also revealed where the cause(s) which judges believe underlie misdemeanant shoplifting by the elderly would actually appear to be aggravated rather than remediated by the sanctions chosen. A special instance of this--and perhaps an incredible travesty--occurs with respect to judges who believe elderly shoplifting is caused in the main by economic need. Of the 31 judges who held this belief, 45 percent sanction the defendants with fines and/or court costs. In essence, many judges appear to believe the elderly engage in shoplifting because they can't afford to pay for the purloined articles. They then proceed to sanction them in such a way as to aggravate the very situation which they perceive is responsible for the law violative behavior in the

first place.

Do our data suggest a possible explanation for this otherwise inapposite situation? Of course the logic of sanctioning law violators is a highly complex system involving many decisions each of which, in turn, involves many variables in an intricate and still unknown relationship. However, one reasonable possibility is that these judges may believe that the elderly shoplift for economic reasons but they are simply unsympathetic toward the elderly in general. This, in turn, neutralizes them to any charge that their economic penalties only aggravate the financial difficulties which cause the shoplifting in the first place. In essence, they hold to the position that: "The elderly steal because they are poor, but that's their problem. Stealing is still stealing, regardless of the cause." We thus sought to learn what proportion of the judges who believe economic need is the primary cause of misdemeanant elderly shoplifting, but who nevertheless invoke economic sanctions in such cases, are unsympathetic toward the elderly. Secondly, we sought to determine if they were significantly more likely to be unsympathetic than judges who hold similar causal beliefs but who do not use economic sanctions. Of the 14 judges who both believe the elderly shoplift because of economic need and who sanction it with economic penalties, none were unsympathetic, 60 percent were sympathetic, and 40 percent were neutral. In sum, our data imply that unsympathetics are more likely to believe elderly

shoplifting occurs because of psychological problems, (53 percent cite it as the prime cause), than because of economic need. Furthermore, even when they do believe it is due to economic need, they are less likely in general to use economic sanctions than sympathetic judges.

An equally contradictory relationship occurs among judges who believe the primary cause of misdemeanant shoplifting among the elderly is psychological problems. These judges are much more likely to respond by implementing probation (17/35), or economic sanctions (12/35), but only 20 percent (7/35) use counselling. Since probation engenders a counselling dimension the amount of discord is somewhat minimized. It nevertheless remains that judges who believe the elderly shoplift because they have psychological problems are more likely to assert that they use economic sanctions in such cases than counselling. Again we attempted to see if this variance was somehow due to a general lack of sympathy for the elderly. Results indicate that of the twelve who believe the elderly shoplift because of psychological problems, and who sanction it economically, seven (the majority) are actually sympathetic towards the elderly. Of the remainder, four are unsympathetic and one is neutral. Thus, lack of sympathy does not appear to be very important in explaining this apparent contradiction between what one perceives as the cause of a crime and how one sanctions it. We do note, however, that none of the eight unsympathetics use counselling in such instances, but 24 percent (4/16) of

the sympathetics do.

A final interesting and unexpected observation occurs when we addressed the question: "How do judges who believe the elderly shoplift because of economic need, and who exacerbate this situation by imposing economic sanctions, conceptualize the major function of the criminal justice system? Alternatively stated, "Do judges justify their use of economic sanctions in elderly misdemeanant shoplifting cases, when they believe it's caused by economic need, by appealing to some higher loyalty in the criminal justice system?"

The majority view the prime function of the criminal justice system as effecting "justice and fairness." Indeed, 79 percent (11/14) who use economic sanctions among the 31 who believe it is caused by economic need, cite justice and fairness as the major function of the criminal justice system. Interestingly, 73 percent (8/11) of these were sympathetics. It would appear that the sanction used here is congruent with the goals of the system, but in conflict with beliefs regarding the cause of this particular violation. Does this mean that the cause of the violation is secondary in selecting sanctions relative to the goals of the system? Moreover, will the demands of the latter prevail even if it means the sanction will compound the problem that produced the violation in the first place? Our findings would support just such conclusions.

Do Judges Favor Intervention For Elderly Misdemeanants?

The final segment of our explorations addressed judicial willingness to accept pretrial intervention for elderly misdemeanants in general. The vast majority of judges favor having an intervention program of some kind for elderly misdemeanants. Eighty-two percent (17/94) of the respondents so indicate. There are, however, two operative concepts at work in this statement: 1) judges may favor intervention simply because the defendant is elderly regardless of the character of the offense; 2) judges may favor intervention in cases of misdemeanors regardless of the age of the defendant. To unravel which is more relevant, if indeed either is relevant, we then asked judges to indicate if they believed advanced age should entitle the defendant involved in misdemeanors to special consideration. Only 41 percent agreed. However, we find there is a significant correlation at the .05 level between believing advanced years should allow special consideration being accorded the elderly misdemeanant and the likelihood of favoring intervention for elderly misdemeanants ($X^2 = 10.04$). This would suggest age and not the misdemeanant level of the offense is the operative concept underlying the favoring of intervention in these cases.

We then sought to determine whether the socio-demographic traits of judges' age, length of judicial experience, or pre-judicial occupation is related to the likelihood of accepting intervention programming for elderly misdemeanants.

If older judges are indeed more conservative than younger judges, we would anticipate that they would support more traditional--and legalistic--procedures in responding to elderly misdemeanants. Since intervention programs essentially involve side-stepping the rigors of criminal procedures, with judges often transferring their jurisdictional authority over the offender to health and rehabilitative personnel (HRS), innovative approaches associated with a liberal judiciary, we predicted that older judges are more likely than younger judges to reject intervention for elderly misdemeanants. This led to our testing the following null hypothesis:

H_0: There is no statistically significant relationship between judges' age and the likelihood of favoring pretrial intervention for elderly misdemeanants.

A chi-square test of significance was generated, and the results were not statistically significant at the .05 level ($X^2 = 0.79$). Thus, we could not reject the null hypothesis. Whether a judge is younger or older, at least as nominally specified in this study, appears irrelevant in determining whether s/he accepts or rejects pretrial intervention for elderly misdemeanants.

We then reasoned that judges with more experience on the bench would be more "seasoned" and therefor more willing to

have elderly misdemeanants diverted from their court calendars, possibly to reduce court delays encountered by those awaiting judicial attention for more serious offenses. Alternatively, it is equally reasonable to hypothesize that increased experience on the bench exposes judges to more types of offenders, including many elderly. This, in turn, could toughen their approach and, concomitantly, decrease the likelihood of their believing that elderly misdemeanants should be diverted from standard criminal justice procedures as typically required by pretrial intervention. These options resulted in our testing the following null hypothesis:

> HO_1: There is no statistically significant relationship between length of judicial experience and the likelihood of favoring pretrial intervention for elderly misdemeanants.

A chi-square test of significance was generated and the resulting $X^2 = 0.08$ is not significant at the .05 level. Thus, we cannot reject the null hypothesis. Regardless of whether judges had more or less experience on the judiciary, they were equally likely to accept (or reject) intervention programming for elderly misdemeanants.

We then sought to determine if there is a statistically significant correlation between judges who had pre-judicial careers as attorneys, public servants, or businessmen and

whether they were for or against intervention programs for elderly misdemeanants. A chi-square was implemented to test the following null hypothesis:

> HO_1: There is no statistically significant relationship between judges' pre-judicial career and willingness to accept pretrial intervention for elderly misdemeanants.

The resulting $X^2=1.76$ is not significant at the .05 level. Thus, we cannot reject the null hypothesis.

Having determined that neither judges' age, nor length of judicial experience, nor pre-judicial career appears to effect the likelihood of their favoring or rejecting pretrial intervention for elderly misdemeanants, we then sought to test whether or not certain beliefs judges hold concerning the elderly might influence their decision in this regard. Using chi-square tests we find that neither judges' beliefs regarding the elderly's need for greater respect, nor their beliefs about society's welfare obligations to the elderly prove to be related to their willingness to accept pretrial intervention for elderly misdemeanants, $X=0.54$ and $X=4.08$ respectively. Concomitantly, it follows that nothing in our data supports the thesis that judicial willingness to accept intervention programs for elderly misdemeanants is a consequence of a general desire to protect the elderly.

VI. CONCLUSION

What do our findings imply about the judiciary and the system of justice it is sworn to uphold? Most judges appear sensitive to the position of the elderly in our society, and they are sympathetic to their needs and interests. However, also counted among them is a surprisingly large cadre of judges who in many significant ways prove to be less than sympathetic towards the elderly in general. Regardless of judges' attitudes in this regard, we observe that the vast majority of judges believe that the elderly should receive special treatment when in the arms of the criminal justice system. Furthermore, apparently affording special treatment to the elderly translates into taking their age into consideration when choosing sanctions for their misdemeanant behavior. In point of fact, however, the sanctions actually employed appear congruent with those one would expect to find for any age group of misdemeanants, and constitute a reaffirmation of the legalist tradition. There is extensive recourse to probation and fines, with only a modest number applying the more social welfare oriented approaches of required community service and counselling.

While this may summarize what judges do with elderly misdemeanants, it by no means is to imply that they are satisfied with the present state of justice for elderly misdemeanants. Indeed, several of the major findings emerging from this study point in one direction: the judiciary is at odds with itself regarding the sanctioning of

elderly misdemeanants. This is evidenced on two levels, one personal and the other organizational. On a personal level we observe that many judges use one form of sanction, typically legalistic (e.g. fines), but they prefer another, typically social welfare oriented (e.g., pretrial intervention). That so many judges use economic sanctions but so few evaluate them as ideal is a case in point. Moreover, that a significant proportion of those who believe misdemeanant shoplifting by the elderly is caused by economic need apply economic sanctions while at the same time disavowing them as ideal, constitutes a potentially demoralizing disjunction between one's attitudinal system and one's behavioral system. Correlatively, they reflect a judicial need for more freedom in processing elderly delinquents than they currently perceive themselves as having. On an organizational level, the criminal justice system confronting the elderly misdemeanant is plagued by a number of special dilemmas. For example, in our society age and authority usually go hand in hand, especially where it pertains to matters of morality, tradition, and more metaphysical issues of justice, equity, and freedom. In the present instance, however, that relationship is reversed. The younger judge is the superior authority while the older defendant is the subordinate. Such a role reversal is often an uncomfortable situation for all concerned. It also eschews several otherwise viable social control techniques. Admonishment, for example, a common technique used by the

judiciary when addressing younger defendants in similar instances of misdemeanant behavior becomes almost burlesque in the context of elderly misdemeanants. Similarly, a one year sentence or a fine engenders different meanings and consequences for elderly as compared to juvenile defendants. Most important, the system is not functioning in a manner congruent with the ideals of its chief administrative officers. These ideals, in turn, support the policy position that the elderly ought to be diverted into some form of an intervention program. Eighty-two percent (77/94) of the judges sampled so argue. Moreover, they justify this position in a number of important ways: 1) 69 percent (60/87) posit that such intervention would not reduce the deterrent effect of the law; 2) 66 percent (56/88) emphasize that it would be a cost effective and time saving strategy for an already over-extended judiciary; 3) 71 percent (63/89) indicate that it would be more beneficial to the psychological well-being of the defendant than current procedures.

Several innovative ideas concerning the practice of criminal justice in relation to elderly misdemeanants also emerge from this research. Foremost is the obvious need for creative intervention programs and related procedural strategies into which the elderly may be channelled, either in lieu of mainstreaming them into the court system, or as an ameliorative strategy for dealing with them once they do approach the bench as criminal defendants. Along these lines

we might anticipate the establishment of pretrial intervention programs such as the Broward Senior Intervention and Education Program in Hollywood, Florida. Here, offenders ages sixty and older who are convicted after pleading guilty to misdemeanant shoplifting are required to participate in counselling, community service activities, and social networking/reintegration opportunities. At the same time, their names and reputation are protected (Feinberg, 1983). Concomitantly, we evidence the need of sensitivity training for judges concerning the problems of elderly, their needs, interests, and the myths and realities of their life style. In addition, certain current inequities in the way in which the elderly are effected by traditional legalist procedures and sanctions must be addressed. For instance, fining those who are believed to shoplift because they lack sufficient income to purchase the purloined articles, and then justifying this in terms of such criminal justice goals as justice and fairness, not only appears contradictory but borders on the absurd. In addition, there is an obvious need for greater reflection on the part of the judiciary regarding: 1) the elderly misdemeanant and the goals of the criminal justice system; 2) the most efficacious procedures for determining and administrating criminal justice for the elderly; 3) the most appropriate sanction alternatives for elderly misdemeanants (especially given their health woes, relatively limited life expectancy, nominal psychological and economic coping resources, and the burden of limited time and

opportunity to redeem lost status and reputation; 4) the personnel and facilities the court will need to have available to ensure the criminal justice interests of the elderly misdemeanant; 5) the ways in which the criminal justice system may use this current crisis in the lives of the elderly misdemeanant as an opportunity to assess their other legal needs, including, for example, their need for estate planning, and assistance with pension and social security benefits.

In all these ways we are reminded of the juvenile justice system , its founding rationale, objectives and special operational procedures. Indeed, carrying the analogy to its ultimate conclusion we ask: "Is there a real need for an elderly justice system, parallel to the juvenile justice system, into which the elderly misdemeanant might best be directed?" This question must be addressed now, before the problem of elderly criminality expands to require emergency level reaction, and the kind of ad hoc band aid strategies typically associated with more myopic criminal justice planning.

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